

**Filed 1/15/15 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

2015 ND 8

State of North Dakota,

Plaintiff and Appellant

v.

Jayden Rae Washburn,

Defendant and Appellee

No. 20140154

Appeal from the District Court of Burleigh County, South Central Judicial District, the Honorable Bruce B. Haskell, Judge.

REVERSED AND REMANDED.

Per Curiam.

Britta K. Demello Rice (argued), Assistant State's Attorney, and Tessa Vaagen (on brief), under the Rule on Limited Practice of Law by Law Students, 514 East Thayer Avenue, Bismarck, N.D. 58501, for plaintiff and appellant.

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State v. Washburn

No. 20140154

Per Curiam.

[¶1] The State appeals from a district court order dismissing the prosecution of Jayden Washburn for refusing to submit to a chemical test for intoxication in violation of N.D.C.C. § 39-08-01(1)(e) after she submitted to field tests for intoxication and was arrested for driving under the influence. The district court determined the State could not constitutionally criminalize a driver's exercise of the right to refuse to submit to a warrantless chemical test. The State argues the state and federal constitutional prohibitions against unreasonable searches and seizures do not preclude the State from criminally charging Washburn with refusing to submit to a chemical test for intoxication. In State v. Birchfield, 2015 ND 6, ¶¶ 1, 19, we recently held the criminal refusal statute did not violate Birchfield's right to be free from an unreasonable search or seizure under the Fourth Amendment or N.D. Const. art. I, § 8. We reverse the district court order under N.D.R.App.P. 35.1(b) and Birchfield, and we remand for further proceedings.

[¶2] Gerald W. VandeWalle, C.J.
Lisa Fair McEvers
Daniel J. Crothers
Dale V. Sandstrom
Carol Ronning Kapsner